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ROBERT V. VICKERS FAY, SHARPE, FAGAN, MINNICH & McKEE Seventh Floor 1100 Superior Avenue Cleveland, OH 44114-2579			MAI, TRI M	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/680,510
Filing Date: October 07, 2003
Appellant(s): PERONEK ET AL.

MAILED
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Group 3700

Brian E. Turung
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 09/15/05 appealing from the Office action mailed 08/10/2005

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner. In view of applicant's arguments, the examiner hereby withdraw the rejections of:

- 1) Claims 51, 53-58, 60-65 under 35 USC 112, 2nd paragraph over the recitation "at least partially formed of straight surfaces **totaling** an odd number". Noted that claims 28-42, 52, 59, 74-84 **remains** to be rejected under 35 USC 112, 2nd paragraph over the recitation "said straight surfaces symmetrically oriented about the non-circular anti-rotation flange".
- 2) Claims 28-31, 40, 42, 51, 52, 57, 63, 65, 74-76, and 79 under 35 U.S.C. 102(b) as being anticipated by Pivot et al. (5887739).
- 3) Claims 38 and 61 under 35 U.S.C. 103(a) as being unpatentable over Prevot et al. (5887739) in view of Collette (4755404) or the admitted prior art.
- 4) Claims 77 and 78 under 35 U.S.C. 112, first paragraph as these claims have been withdrawn from further consideration.
- 5) Claims 77 and 78 under 35 U.S.C. 103(a) as being unpatentable over Collette (4755404) in view of either Pree (D192942) or JP432 (6-247432), or Akiyama et al. (6752284) as these claims have been withdrawn from further consideration.
- 6) Claims 77 and 78, are rejected under 35 U.S.C. 103(a) as being unpatentable over JP093 (JP61-93093) in view of either Pree (D192942) or JP432 (6-247432) as these claims have been withdrawn from further consideration.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

D,192,942	Pree	5/1962
6,752,284	Akiyama et al.	6/2004
4,755,404	Collette	6/1988
JP61-93093		12/1986
JP6-247432		6/1994

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claim 28-42, 52, 59, 74-76, and 79-84 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation with respect to the plurality of straight surface symmetrically oriented about the flange is inconsistent. The odd number of flanges and apexes would not result in a symmetric orientation. Furthermore, it is unclear about what line the flanges are symmetrically disposed.

2. Claims 28-42, 51-65, 74-76, and 79-84 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Collette (4755404) in view of anyone of Pree (D192942), JP432 (6-247432), or Akiyama et al. (6752284). Collette teaches a bottle having an upper mouth portion, a lower base, and a flange. Collette meets all claimed limitations except for the flange including flange with straight edges.

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With respect to claims 28-35, 38, 40, 42, and 74-75, Pree teaches that it is known in the art to provide a flange with a plurality of straight edges. It would have been obvious to one of ordinary skill in the art to provide a flange with a plurality of straight edges in Collette as taught by Pree to provide an alternate anti slipping flange and/or gripping portion. Note that Pree would meet the limitation with respect to the peripheral edge being at least **partially** formed of straight surfaces **totaling** an odd number. Said limitation only requires 3 edges.

Alternatively, with respect to claims 28-35, 38, 40, 42, and 74-75, JP432 teaches that it is known in the art to provide a flange with a plurality of straight edges (Fig. 1, portion 14B). It would have been obvious to one of ordinary skill in the art to provide a flange with a plurality of straight edges in Collette as taught by JP432 to provide an alternate anti slipping flange and/or gripping portion. Note that JP432 would meet the limitation with respect to the peripheral edge being at least **partially** formed of straight surfaces **totaling** an odd number. Said limitation only requires 3 edges.

Alternatively, with respect to claims 28-35, 38, 40, 42, 74-75, Akiyama teaches that it is known in the art to provide a flange with a plurality of straight edges as shown in Fig. 33 (col. 15, lines 11-12). It would have been obvious to one of ordinary skill in the art to provide a flange with a plurality of straight edges in Collette as taught by Akiyama to provide an alternate anti slipping flange and/or gripping portion. Note that Akiyama would meet the limitation with respect to the peripheral edge being at least **partially** formed of straight surfaces **totaling** an odd number. Said limitation only requires 3 edges.

With respect to claims 36, 37, 51-63, 76, and 79-81, it would have been obvious to one of ordinary skill in the art to provide the flange in the combinations, as set forth above, with an odd

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number of straight edges, specifically an heptagonal shape, to provide the desired number of edges in the flange. With respect to the apexes, it is noted for a polygonal shape with an odd number of straight sides would inherently have the corresponding number of apexes.

3. Claims 28-37, 42, 51-60, 65, 74, 75, 76, are rejected under 35 U.S.C. 103(a) as being unpatentable over JP093 (JP61-93093) in view of either Pree (D192942) or JP432 (6-247432). JP093 teaches a molded plastic container having an upper mouth portion, a lower base, and an anti-rotational flange at portion 9. JP093 meets all claimed limitations except for the flange including flange with straight edges totaling an odd number.

With respect to claims 28-35, 38, 40, 42, 74-75, Pree teaches that it is known in the art to provide a flange with a plurality of straight edges. It would have been obvious to one of ordinary skill in the art to provide a flange with a plurality of straight edges in JP093 as taught by Pree to provide an alternate flange and/or gripping portion. Note that Pree would meet the limitation with respect to the peripheral edge being at least **partially** formed of straight surfaces **totaling** an odd number. Said limitation only requires 3 edges.

With respect to claims 28-35, 38, 40, 42, 74-75, JP432 teaches that it is known in the art to provide a flange with a plurality of straight edges. It would have been obvious to one of ordinary skill in the art to provide a flange with a plurality of straight edges in JP093 as taught by JP432 to provide an alternate anti rotational flange and/or gripping portion. Note that JP432 would meet the limitation with respect to the peripheral edge being at least **partially** formed of straight surfaces **totaling** an odd number. Said limitation only requires 3 edges.

With respect to claims 36, 37, 51-60, and 76, it would have been obvious to one of ordinary skill in the art to provide the flange in the combinations, as set forth above, with an odd

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number of straight edges, specifically an heptagonal shape, to provide the desired number of edges in the flange. With respect to the apexes, it is noted for a polygonal shape with an odd number of straight sides would inherently have the corresponding number of apexes.

Regarding claim 3, note the straight surface in Fig. 3 of Pree.

Regarding claims 33 and 43, JP'093 has a frustoconical shape as claimed. Furthermore, it would have been obvious to one of ordinary skill in the art to provide a frustoconical shape in the bottle JP093 to provide an alternative shape for the flange.

4. Claims 38-41, and 61-64, 82, 83, 84 are rejected under 35 U.S.C. 103(a) as being unpatentable over the JP093 combinations, as set forth above, and further in view of Collette (4755404) or the admitted prior art. The JP093 combinations meet all claimed limitations except for the champagne bottom. Either Collette or the prior art teaches that it is known in the art to provide a champagne bottom. It would have been obvious to one of ordinary skill in the art to provide a champagne bottom in JP093 as taught by Collette or the admitted prior art to provide an alternative bottom.

Furthermore, it would have been obvious to one of ordinary skill in the art to make the container of JP093 from PET as taught by Collette to manufacture the container easily.

(10) Response to Argument

Applicant's arguments filed 09/15/06 have been fully considered but they are not persuasive.

A) Claims 28-41, 74-76, 79-84 being rejected under 35 USC 112, 2nd paragraph. The recitation with respect to the plurality of straight surface symmetrically oriented about the flange is confusing . It seems the odd number of flanges and apexes would not result in a symmetrically

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oriented shape about the flange, and the specification fails to shed any light with respect to the symmetrical orientation of the flange. The only description in the specification concerning the symmetrical is directed to a different embodiment. “the plurality of notches are substantially symmetrically oriented about the anti-rotational flange” (page 8, line 11). Furthermore, it is unclear about what line the flanges are symmetrically disposed. Applicant responses that each of the straight surfaces is disposed symmetrically to one another. The examiner finds this answer unsatisfactory. The claims recite “said plurality of straight surfaces symmetrically oriented about the ..flange”. The claims recite the symmetrical orientation of the straight surfaces as a whole, not the symmetrical orientation of each of the straight surfaces to one another.

B) Claims 28-42, and 51-65, 74-76, and 79-84 being rejected under 35 U.S.C. 103(a) as being unpatentable over Collette (4755404) in view of either Pree (D192942) or JP432 (6-247432), or Akiyama et al. (6752284). Applicant asserts that there is no motivation to combine Collette with any one of Pree, JP432, or Akiyama. The examiner submits the followings:

- 1) Providing a flange adjacent the mouth is known in the art for one gripping the neck when opening the cap of a threaded container and/or holding the container during manufacturing as shown numerously in the prior art of record in this present application.
- 2) With respect to claims 28-35, 38, 40, 42, 74-75, with respect to the recitation “at least partially formed of a plurality of substantially straight surfaces totaling an odd number”, the examiner submits that the term “at least” does not include other elements of the flange as noted by applicant that the term “at least” implies that the claim does not include the apexes (Brief, page 8, ln. 10). In this manner, the examiner submits that the term “at least” does not include other straight surfaces. The term “total” is interpreted as the total of selected straight surfaces

on the peripheral flange to be odd, and does not limit the total of all straight surfaces on the peripheral flange to be odd. In other words, the recitation “at least partially formed of a plurality of substantially straight surfaces totaling an odd number” requires only three straight surfaces, no matter the shape of the polygonal flange. Furthermore, the examiner submits that the embodiment of 8C has an even number (8) of straight surfaces of 170 to which claims 45 and 47 (these claims have been withdrawn) are readable thereon. Thus, the examiner submits that the recitation requires only three straight faces no matter the shape of the flange.

3) The specification asserts that all polygonal structures are equivalents, i.e., “In another and/or alternative particular, non-limiting design, the plurality of substantially straight surfaces form a polygonal shape” (pg. 8, ln. 3). The specification fails to set forth how an odd number polygonal shape would be more better than an even polygonal shape or even a non-circular flange at all.

5) With respect to claims 36, 37, 51-63, 76, and 79-81, it would have been obvious to one of ordinary skill in the art to provide the flange in either JP093 combinations, as set forth above, with an odd number of straight edges, specifically an heptagonal shape, to provide the desired number of edges in the flange and/or gripping portion. With respect to the apexes, it is noted for a polygonal shape with an odd number of straight sides would inherently have the corresponding number of apexes.

6) Furthermore, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references

themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the examiner submits that there are clear motivation in the references and the combination requires only common sense to substitute one of equivalents for another.

C) Claims 28-37, 42, 51-60, 65, 74, 75, 76, are rejected under 35 U.S.C. 103(a) as being unpatentable over JP093 (JP61-93093) in view of either Pree (D192942) or JP432 (6-247432).
Similar to the arguments presented with respect to the Collette rejection, as set forth above. Applicant asserts that the combination was made in hindsight and there is no motivation to make any of the combination. As set forth above, the examiner submit that to provide a flange with a non-circular structure, specifically a polygonal flange is well known in the art for gripping the neck when opening the cap of a threaded container and/or holding the container during manufacturing as shown numerously in the prior art of record in this present application.

Regarding claims 28-35, 38, 40, 42, 74-75, with respect to the recitation “at least partially formed of a plurality of substantially straight surfaces totaling an odd number”, as set forth above, this recitation requires only three straight surfaces, no matter the shape of the polygonal flange.

With respect to claims 36, 37, 51-60, and 76, it would have been obvious to one of ordinary skill in the art to provide the flange in the combinations, as set forth above, with an odd number of straight edges, specifically an heptagonal shape, to provide the desired number of edges in the flange. With respect to the apexes, it is noted for a polygonal shape with an odd number of straight sides would inherently have the corresponding number of apexes.

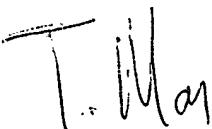
D) Claims 38-41, and 61-64, 82, 83, 84 are rejected under 35 U.S.C. 103(a) as being unpatentable over the JP093 combinations, as set forth above, and further in view of Collette (4755404) or the admitted prior art. The examiner submits that to make a container PET, along with a champagne bottom is well known in the art as taught by PET. The bottom of JP093 (feet bottom) and the champagne bottom of Collette are well known equivalents in the art of bottle.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Tri Mai



Conferees:

Jes Pascua



Nathan Newhouse

A handwritten signature consisting of stylized initials and a surname.